

# Fraudulent Conveyance



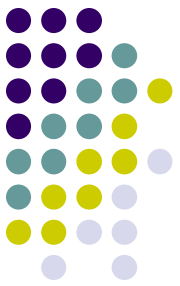
This is a conveyance of property made by the debtor to avoid having to give up that property during the bankruptcy proceeding.

“Conveyance” is a broad term and can include any giving up of the right to money; even up to and including renouncing interest in a Will...

Two types of fraudulent conveyance:

- (1) **Actual Fraudulent Conveyance:** Intentional fraudulent transfer with the *intent* to hinder, delay or defraud creditors (to get assets away from the creditor). Adequate consideration for the conveyance is no defense to an actual fraudulent conveyance.
- (2) **Constructive Fraudulent Conveyance:** Transfer of property by Debtor without receiving “reasonably equivalent value” in return. This requires “insolvency” of Debtor, and applies even if debtor had no intent to defraud anyone.
  - A debtor is “insolvent” if he or she
    - (a) does not have positive assets that are more than debts; or
    - (b) is in a position where it is unreasonable for Debtor to take on the new debt (insufficient cash flow)

# Fraudulent Conveyance (cont.)

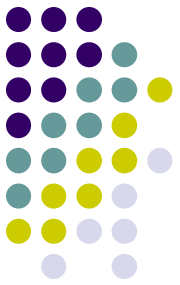


Other factors will also be examined by the court to determine whether a conveyance is fraudulent, such as whether Debtor continues to use the property or whether there were proceedings against debtor when the transfer was made.

## Remedies for a fraudulent conveyance:

- Return of the transferred goods so the creditors can collect them
- Return of the value of the transferred goods to the creditors
- Possible criminal penalties against the parties involved in the transfer

# Secured Transactions – Priority of Creditors



Unsecured creditor: has no security interest at all.

Secured, but unperfected creditor:

- has a security interest, but has not perfected the interest.

Secured, perfected creditor:

- Perfection can be done by:
  - Filing a financing statement
  - Possession of the collateral by the creditor
  - A purchase money security interest is automatically considered to be perfected.

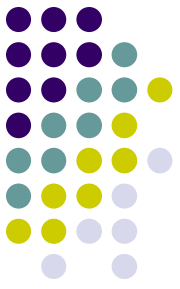
Purchase money security interest holder

Buyer in the ordinary course of business

higher  
priority



# What is Reaffirmation?



Reaffirmation is a procedure by which a debtor agrees to pay a debt that would otherwise be discharged in bankruptcy.

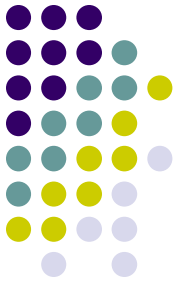
For example, a debtor may wish to keep his/her car, and thus may agree with the lender to continue to be responsible for the car loan.

If a debtor makes the choice to "reaffirm" a debt, he/she will file a reaffirmation agreement with the Court, which will evaluate that agreement.

It is up to the Court whether or not the agreement will be approved. Before a Court will approve a reaffirmation agreement, it must believe that the agreement:

- Is voluntary;
- Is in your best interest; and
- Will not create an undue hardship.

A debtor may be able to cancel a reaffirmation agreement, within sixty days of filing it with the court, or before his/her bankruptcy petition is approved. A debtor should be cautious with reaffirmation, as he/she will continue to owe the debt as if he/she had never filed for bankruptcy.



**QUIZ TIME!**

# What is “Conversion”?

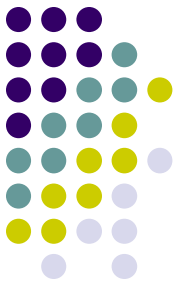


"Conversion" is the process of transforming a "Chapter 7" petition for bankruptcy relief into a "Chapter 13" filing, or vice versa.

It may become apparent during the course of a bankruptcy that a debtor will be better served through the "conversion" of his petition.

However, the debtor is not permitted to keep switching back and forth between chapters, and should be careful about taking this step.

# What is a “Preference”?



A "Preference" occurs when a debtor treats one creditor more favorably than another.

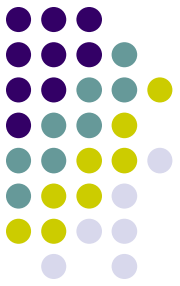
For example, a debtor may choose to use all of its assets to pay off the entire debt owed to one creditor, leaving a second unable to collect any money at all.

## A Court will disallow a preference if:

- payment is made for the benefit of a creditor, for a debt owed prior to the initiation of bankruptcy,
- the payment is made while the debtor is insolvent,
- and the transfer is made within 90 days of the debtor's filing the bankruptcy petition (or 1 year, if the payment was made to an "insider" such as a relative or corporate director).

A creditor receiving a "preference" may be forced to restore it to the debtor's estate.

# Can A Court Refuse To Grant Bankruptcy?



**Besides not being financially eligible, or going to counseling, other reasons for denials result when the Court concludes that:**

- The debtor failed to adequately explain the loss of assets;
- The debtor committed perjury during the course of the bankruptcy;
- The debtor failed to obey the lawful orders of the bankruptcy court;
- The debtor fraudulently transferred, concealed, or destroyed property that should have been included in the estate